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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP
Chairman

GARY PIERCE
Commissioner

BRENDA BURNS
Commissioner

SUSAN BITTER SMITH
Commissioner

BOB BURNS
Commissioner

Arizona Corporation Commission
DOCKETED

OCT 27 2014

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ARIZONA CORPORATION COMMISSION
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IN THE MATTER OF THE TOWN OF
FOUNTAIN HILLS' FORMAL
COMPLAINT AGAINST CHAPARRAL
CITY WATER COMPANY

DOCKET NO: W-02113A-14-0359

**MOTION TO DISMISS AND
ANSWER**

Pursuant to AAC R14-3-106(H) and Rule 12(b), Arizona Rules of Civil Procedure, Chaparral City Water Company ("CCWC" or "Company") files this Motion to Dismiss of the Town of Fountain Hills' ("Town") Complaint dated October 3, 2014 (the "Complaint"). For the reasons set forth below, the Arizona Corporation Commission ("Commission") should dismiss the Town's Complaint.

I. BACKGROUND

The background of the context of this Complaint is critical for understanding the many bases for its dismissal. Although the Town recites certain facts as to the Company's rate case, other facts are conspicuously omitted. CCWC filed a rate case with the Commission on April 26, 2013, seeking a rate increase of 34.8% and seeking the Commission's approval to implement a System Improvement Benefits Mechanism ("SIB").¹ The Town moved to intervene in the rate case application on August 2, 2013

¹ In its Final Schedules, the Company requested a rate increase of approximately 30 percent. See Decision No. 74568 at 4.

1 and was granted intervention on August 12, 2013. An evidentiary hearing was held on
2 the Company's application on February, 18, 19, 20, 21, and 28, 2014, during which
3 twelve witnesses appeared on behalf of the parties and during which the Administrative
4 Law Judge admitted more than fifty exhibits into evidence. The Town did not appear at
5 the evidentiary hearing and did not offer evidence.²

6 Following the hearing, the Administrative Law Judge issued a Recommended
7 Opinion and Order dated May 28, 2014. Prior to the Open Meeting on June 10, 2014, the
8 Town did not file exceptions to the Recommended Opinion and Order. Following
9 deliberations at the Commission's June 10, 2014 Open Meeting, at which the Town did
10 not appear, the Commission issued Decision No. 74568, dated June 20, 2014, which it
11 later amended Nunc Pro Tunc in Decision No. 74585, dated July 30, 2014 (collectively,
12 the "Decisions"). In these Decisions, the Commission approved a 22.79% rate increase
13 and approved the Company's request for a SIB mechanism. The Commission specifically
14 found that the "rates and charges and terms and conditions of service established [in the
15 Decision] are just and reasonable and in the public interest."³ The new rates initially went
16 into effect on July 1, 2014, as ordered by Decision No. 74568. The corrected rates, as
17 ordered by the Commission, went into effect following the July 30, 2014 effective date of
18 Decision No. 74585.

19 The Town filed an Application for Rehearing with the Commission on July 10,
20 2014. The Commission discussed the Rehearing Application at its July 22, 2014 Staff
21 Open Meeting, but did not grant the application, which was denied by operation of law.
22 RUCO also filed an Application for Rehearing on July 7, 2014. That Application was
23 also denied by operation of law. The Town did not file a notice of appeal of the
24 Commission's decision. RUCO, as it has in multiple rate cases, filed a notice of appeal
25 with the Arizona Court of Appeals on August 25, 2014, challenging the constitutionality

26 ² See Docket No. W-02113A-13-0118.

³ Decision No. 74568 at 60.

1 of the SIB mechanism, which is currently stayed pending the resolution of a consolidated
2 appeal of the same issues in the Arizona Water Company rate cases.⁴

3 In its Complaint, the Town, less than four months after the initial implementation
4 of new rates ordered by the Commission, is in effect seeking a new rate case, alleging that
5 the rates ordered to be implemented by the Commission following a thirteen month rate
6 case are unjust and unreasonable and that the SIB mechanism is unconstitutional. This
7 collateral attack on the Commission's Decisions cannot stand, as the reading given to the
8 statute by the Town would lead to endless litigation and endless rate cases and make
9 meaningless the statutory remedies set forth by the legislature to challenge a Commission
10 decision.

11 II. STATUTORY FRAMEWORK

12 The Town brings its Complaint under A.R.S. § 40-246, which provides as follows:

13 [N]o complaint may be entertained by the Commission, except upon its
14 own motion, as to the reasonableness of any rates or charges of any gas,
15 electrical, water or telephone corporation, unless it is signed by the mayor
16 or a majority of the legislative body of the city or town within which the
17 alleged violation occurred, or by not less than twenty-five consumers or
purchasers, or prospective consumers or purchasers, of the service.

18 This statute must be harmonized with other statutes governing the Commission,
19 particularly those setting forth the statutory remedies provided to parties seeking redress
20 from a Commission decision. *See State v. Arizona Corporation Commission*, 94 Ariz.
21 107, 111, 382 P.2d 222, 226 (1963). Under those statutes, a party must first request
22 rehearing from the Commission's decision. *See* A.R.S. § 40-253. Following denial of an
23 application for rehearing, a party to a rate proceeding must appeal the Commission's
24 decision within thirty days of the denial of the application for rehearing:

25
26

⁴ Order Re: Motion Stay, Arizona Court of Appeals, No. 1 CA-CC 14-0003 (Oct. 15, 2014).

1 Any party to a proceeding before the commission who is dissatisfied with
2 any order of the commission involving public service corporations and
3 relating to rate making or rate design . . . may file within thirty days after a
4 rehearing is denied or granted, ***and not afterwards***, a notice of appeal in the
5 court of appeals to vacate, set aside, affirm in part, reverse in part or
6 remand with instructions to the commission the order if the court of appeals
7 determines upon a clear and satisfactory showing that the order is unlawful
8 or unreasonable.

9 A.R.S. § 40-254.01 (emphasis added). Once a Commission decision becomes final, “in
10 all collateral actions or proceedings, the orders and decisions of the Commission which
11 have become final shall be conclusive.” A.R.S. § 40-252.

12
13 **III. THE TOWN FAILED TO FOLLOW STATUTORY REMEDIES AND**
14 **THEREFORE ITS COMPLAINT IS BARRED AS A COLLATERAL**
15 **ATTACK**

16 Although framed as a complaint against CCWC, the Town’s Complaint is nothing
17 more than a collateral attack upon the Commission’s Decisions. As such, because the
18 Commission’s Decisions are final, those Decisions are conclusive and cannot be
19 challenged by collateral attack. *See* A.R.S. § 40-252; *Miller v. Ariz. Corp. Comm’n*, 227
20 Ariz. 21, 24, 251 P.3d 400, 404 (Ct. App. 2011). The relief sought by the Town is a
21 finding that the rates charged by CCWC are unjust and unreasonable and that the SIB
22 mechanism is unconstitutional. The Town, of course, had the opportunity after the
23 Commission’s denial of the Town’s application for rehearing to appeal to the Court of
24 Appeals as required by A.R.S. § 40-254.01. Because the Town did not exercise that
25 statutory right as required by statute, it cannot collaterally attack the Commission’s
26 Decisions through this Complaint. Although the Town frames its Complaint as a
challenge to the Commission’s constitutional authority to implement these rates, this is no
different than a challenge to the Commission’s Decisions and must be dismissed.

1 IV. **ALLOWING THE COMPLAINT TO PROCEED PURSUANT TO A.R.S.**
2 **§ 40-246 WOULD RENDER OTHER STATUTES MEANINGLESS**

3 Quite simply, A.R.S. § 40-246 cannot be read to allow a party to a rate case
4 proceeding to avoid the statutory appeals requirements and seek to initiate what in effect
5 is a new rate case less than four months after the Commission has issued a final decision.
6 Such a reading of the statutes does not harmonize the statutes noted above and would lead
7 to an absurd and unreasonable result, which must be avoided. *See, e.g., Porter v. Triad of*
8 *Ariz.*, 203 Ariz. 230, 233, 52 P.3d 799, 802 (Ct. App. 2002); *State v. Altamirano*, 166
9 Ariz. 432, 437, 803 P.2d 425, 430 (Ct. App. 1990) (“The Court should avoid a statutory
10 interpretation that leads to absurd results which could not have been contemplated by the
11 legislature.”) In fact, allowing a party to a rate case to proceed in this matter would
12 render A.R.S. §§ 40-252, -253, and -254.01 meaningless, which statutory construction
13 cannot allow. *See Save Our Valley Assn. v. Ariz. Corp. Comm’n*, 216 Ariz. 216, 221, 165
14 P.3d 194, 199 (Ct. App. 2007).

15 V. **EVEN IF THE TOWN HAD NOT BEEN A PARTY TO THE**
16 **COMPANY’S RATE CASE, THE COMMISSION SHOULD DISMISS**
17 **THE COMPLAINT**

18 The Attorney General recognized the limits of the provisions of A.R.S. § 40-246 in
19 an opinion issued in 1969. *See AG Opinion 69-6* (Feb. 5, 1969). In that Opinion, the
20 Attorney General was asked whether the provisions of A.R.S. § 40-246 required the
21 Commission to initiate a full scale rate hearing. Recognizing the obvious limits of this
22 statute, the Attorney’s General’s answer was “no” finding correctly that it would be
23 “unreasonable” to assume that the legislature intended such a result. In that limited
24 instance, the Attorney General indicated that the intent of the statute was to require the
25 Commission to initiate an inquiry into the rates being charged. Of course, as the
26 constitutional body with plenary authority over ratemaking for public service
 corporations, the Commission always has such authority and can make an inquiry at any

1 time. And, in this case, the Commission has just concluded such in inquiry and ordered
2 the Company to charge the rates and charges that are currently in effect. As such, in this
3 instance, even if the Town had not intervened in CCWC's rate case proceeding, there
4 would be no basis by which to require any further inquiry into the rates and charges
5 ordered by the Commission in July of this year. That inquiry has just concluded and the
6 Commission specifically found in a final decision that the rates to be charged by the
7 Company were just and reasonable and in the public interest.

8 For these reasons, the Commission should dismiss the Town's Complaint under
9 AAC R14-3-106(H) and Rule 12(b), Arizona Rules of Civil Procedure. Pursuant to AAC
10 R14-3-106(H), CCWC also provides it Answer to the Complaint and its affirmative
11 defenses as follows:

12
13 **ANSWER**

14 1. In response to paragraph 1, on information and belief, CCWC admits the
15 allegations in paragraph 1.

16 2. In response to paragraph 2, on information and belief, CCWC admits the
17 allegations in paragraph 2.

18 3. In response to paragraph 3, on information and belief, CCWC admits the
19 allegations in paragraph 3.

20 4. In response to paragraph 4, on information and belief, CCWC admits the
21 allegations in paragraph 4.

22 5. CCWC admits the allegations in paragraph 5.

23 6. CCWC denies the allegations in paragraph 6 and affirmatively alleges that
24 CCWC was acquired by EPCOR Water (USA) Inc.

25 7. CCWC admits the allegations of paragraph 7.
26

1 8. In response to paragraph 8, CCWC states that the allegation constitutes a legal
2 conclusion to which no response is required and the statute cited speaks for itself.

3 9. CCWC admits the allegations in paragraph 9.

4 10. CCWC admits the allegations in paragraph 10 and affirmatively alleges that
5 despite filing the testimony of Mr. Buchanan, his testimony was not admitted at the
6 hearing and is not part of the evidentiary record in the rate case proceeding.

7 11. In response to paragraph 11, CCWC admits that its original request was for a
8 34.8 percent increase but affirmatively alleges that its revised request was for a rate
9 increase of approximately 30 percent.

10 12. In response to paragraph 12, CCWC admits that it requested a SIB and
11 affirmatively alleges that the request as set forth in the record of CCWC's rate case speaks
12 for itself.

13 13. CCWC denies the allegations of the first sentence of paragraph 13. In response
14 to the allegations of the second sentence of paragraph 13, the testimony of Ms. Coleman
15 speaks for itself.

16 14. In response to paragraph 14, CCWC denies that RUCO recommended a 7.87
17 percent rate increase and affirmatively alleges that RUCO recommended an increase of
18 8.31 percent. CCWC also admits that RUCO opposed the SIB mechanism.

19 15. In response to paragraph 15, CCWC denies that Staff recommended an 11.23
20 percent increase and affirmatively alleges that Staff recommended an increase of 14.47
21 percent.

22 16. In response to paragraph 16, Mr. Buchanan's filed document speaks for itself,
23 and affirmatively alleges that Mr. Buchanan's testimony is not part of the evidentiary
24 record in CCWC's rate case.

25 17. In response to paragraph 17, the ROO speaks for itself.

26 18. CCWC admits the allegations in paragraph 18.

1 19. In response to paragraph 19, the Commission's Decisions speak for themselves.
2 In response to the document attached as Exhibit A, CCWC denies any allegations
3 contained in that document as no source is provided. CCWC also affirmatively alleges
4 that Exhibit A is not part of any record at the Commission.

5 20. In response to paragraph 20, the Commission's Decisions speak for themselves.
6 In response to the document attached as Exhibit A, CCWC denies any allegations
7 contained in that document as no source is provided. CCWC also affirmatively alleges
8 that Exhibit A is not part of any record at the Commission.

9 21. CCWC denies the allegations in in paragraph 21 and affirmatively alleges that
10 implementation of the SIB mechanism remains subject to Commission approval.

11 22. In response to paragraph 22, the Decisions speak for themselves.

12 23. In response to paragraph 23, CCWC has insufficient knowledge or information to
13 admit or deny the allegations contained in paragraph 23 and on that basis denies them.

14 24. In response to paragraph 24, CCWC has insufficient knowledge or information
15 to admit or deny the allegations contained in paragraph 24 and on that basis denies them.

16 25. In response to paragraph 25, CCWC has insufficient knowledge or information to
17 admit or deny the allegations contained in paragraph 25 and on that basis denies them.

18 26. In response to paragraph 26, CCWC has insufficient knowledge or information to
19 admit or deny the allegations contained in paragraph 26 and on that basis denies them.

20 27. In response to paragraph 27, CCWC has insufficient knowledge or information to
21 admit or deny the allegations contained in paragraph 27 and on that basis denies them.

22 28. In response to paragraph 28, CCWC has insufficient knowledge or information to
23 admit or deny the allegations contained in paragraph 28 and on that basis denies them.

24 29. In response to paragraph 29, CCWC has insufficient knowledge or information to
25 admit or deny the allegations contained in paragraph 29 and on that basis denies them.

26

1 30. In response to paragraph 30, CCWC has insufficient knowledge or information to
2 admit or deny the allegations contained in paragraph 30 and on that basis denies them.

3 31. In response to paragraph 31, CCWC has insufficient knowledge or information to
4 admit or deny the allegations contained in paragraph 31 and on that basis denies them.

5 32. In response to paragraph 32, CCWC has insufficient knowledge or information to
6 admit or deny the allegations contained in paragraph 32 and on that basis denies them.

7 33. In response to paragraph 33, CCWC has insufficient knowledge or information to
8 admit or deny the allegations contained in paragraph 33 and on that basis denies them.

9 34. In response to paragraph 34, CCWC has insufficient knowledge or information to
10 admit or deny the allegations contained in paragraph 34 and on that basis denies them.

11 35. In response to paragraph 35, CCWC incorporates the responses in paragraphs 1-
12 34 above.

13 36. In response to paragraph 36, CCWC states that the allegation constitutes a legal
14 conclusion to which no response is required and the constitutional provision cited speaks
15 for itself.

16 37. In response to paragraph 37, CCWC states that the allegation constitutes a legal
17 conclusion to which no response is required and the statute and constitutional provision
18 cited speak for themselves.

19 38. In response to paragraph 38, CCWC states that the allegation constitutes a legal
20 conclusion to which no response is required and the constitutional provision cited speaks
21 for itself.

22 39. In response to paragraph 39, CCWC admits it is a public service corporation.
23 The remainder of the paragraph calls for a legal conclusion to which no response is
24 required.

25 40. CCWC denies the allegations of paragraph 40.

26 41. CCWC denies the allegations of paragraph 41.

1 42. In response to paragraph 42, CCWC incorporates the responses in paragraphs 1-
2 41 above.

3 43. In response to paragraph 43, CCWC states that the allegation constitutes a legal
4 conclusion to which no response is required and the constitutional provision cited speaks
5 for itself.

6 44. In response to paragraph 44, CCWC states that the allegation constitutes a legal
7 conclusion to which no response is required.

8 45. In response to paragraph 45, CCWC states that the allegation constitutes a legal
9 conclusion to which no response is required.

10 46. In response to paragraph 46, CCWC states that the allegation constitutes a legal
11 conclusion to which no response is required.

12 47. CCWC denies the allegation in paragraph 47, and, to the extent the allegation
13 constitutes a legal conclusion, no response is required.

14 48. CCWC denies the allegation in paragraph 48.

15 49. The remainder of the Complaint constitutes the Town's request for relief to
16 which no response is required; to the extent a response is required, CCWC denies that the
17 Town is entitled to relief.

18 **AFFIRMATIVE DEFENSES**

19 As affirmative defenses, CCWC asserts that the Town's Complaint fails to state a
20 claim upon which relief may be granted; the Town's claims are barred by waiver and
21 estoppel; that the Town has unclean hands and is not entitled to equitable relief. As
22 additional affirmative defenses, CCWC asserts accord and satisfaction, arbitration and
23 award, assumption of risk, contributory negligence, discharge in bankruptcy, duress,
24 estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res
25 judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting
26

1 an avoidance or defense that becomes known to CCWC as additional information
2 becomes known during further investigation or discovery.

3 WHEREFORE, having answered the Complaint, CCWC requests the Commission
4 order as follows:

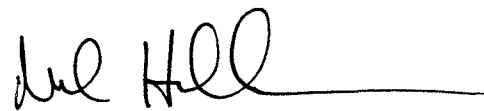
5 A. That the relief sought in the Complaint be denied and that the Town take
6 nothing thereby;

7 B. Such other and further relief as the Commission deems just and proper.

8 Dated this 27th day of October, 2014

9 LEWIS ROCA ROTHGERBER, LLP

10
11
12 By



13 Thomas H. Campbell
14 Michael T. Hallam
15 201 E. Washington, Suite 1200
16 Phoenix, Arizona 85004
17 Attorneys for Chaparral City Water Company

18 ORIGINAL and thirteen (13) copies
19 of the foregoing filed
20 this 27th day of October 2014, with:

21 The Arizona Corporation Commission
22 Utilities Division – Docket Control
23 1200 W. Washington Street
24 Phoenix, Arizona 85007

25 Copy of the foregoing hand-delivered
26 this 27th day of October, 2014, to:

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Lyn Farmer
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7 Copy of the foregoing mailed
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